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Nelson J. Waterbury

NELSON JARVIS WATERBURY;

A Biographical Sketch,

BY

JOHN L. O'SULLIVAN,

Late U. S. Minister to Portugal.

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This slight sketch, of one of the notable public men of New York, was written for a volume specially devoted to the family of which Judge Waterbury is a distinguished member. Though a labor of love, as the portraiture of a life-long friend, the faithful justice of its delineation has been so fully recognized by impartial authorities of the highest eminence, that I have no fear of its being charged with exaggeration by the general public opinion of the community under whose eyes has passed a life so useful and so honorable. It is reprinted in the present form, with the permission of the compilers of the volume referred to, in the belief that other friends, outside of Judge Waterbury's family, will be gratified to peruse and possess it,—not excluding even any adversaries he may have made in the course of his positive and active career.

J. L. O'S.

New York, September 25th, 1880.

NELSON JARVIS WATERBURY.

The writer of the present sketch has accepted with cordial pleasure the invitation to prepare it, addressed to him by the compiler of this volume. No member of the widely extended and honorable family to which, on the mother's side, Mr. Waterbury belongs, can fill a fairer page in the record of its annals. I have known him intimately from his early youth upward, alike in his private, political, and professional life, and, though not always concurring with him in his political action, know him to be one of the most pure and conscientious, of the most generous and high-minded, of the most patriotic and devoted, as well as one of the ablest, of the limited number of men who constitute now the front rank of the legal profession of New York. If friendship should seem to warm any of the colors of this slight portrait sketch, its lines are traced with the pen of truth and justice alone. Distrustful of my competence to judge him properly in the special aspect in which he is to be viewed as a *lawyer*, from having been absent from the country during the greater part of that period which has witnessed his rise to his present distinction at the Bar, I have addressed myself to several of its most eminent members who have had the best opportunity of observing him, both from the bench and on the level ground of association in practice, whether on the same or on opposite sides of the intellectual contests of that noble profession, for *their* experience and judgment of Mr. Waterbury; and it is their portraiture of him which in these lines I only reflect and report. And I confess to have been strongly impressed, most agreeably, by the warmth and force of language with which, with substantial unanimity, so many men by whom to be praised is praise indeed, expressed themselves in regard to Mr. Waterbury as a lawyer.

"Mr. Waterbury is one of the ablest men at this Bar," was the language of one, himself second to none; "and there is probably not one in ten who wins so large a proportion of

the cases he undertakes. If he had devoted himself solely to the profession and left politics alone, which only cost him money instead of gaining it, and if he had been somewhat less generous, he would by this time have made a large fortune."

"Mr. Waterbury is a great man," said another; "though it is not everybody who knows it." "And among those who do not know it," I replied, "is himself." He continued, "Waterbury has remarkable promptness, activity, imagination, resource, and boldness. He has unflinching nerve, and is fearless as a lion. For the planning and direction of a campaign he has no superior. And while he takes the broadest views, he neglects no detail. He has often been the inspiring soul of movements of which others have had the chief credit."

"The important legal office of District Attorney of New York," said another, "has never been filled more ably, uprightly, honorably, and satisfactorily than it was by Mr. Waterbury. Nor is there any position to which he is not equal."

There was a general concurrence in recognizing that among the elements of his success there shone conspicuously his perfect fairness, his evident conscientiousness. Judges and juries alike felt this. Before he pleaded his case, it had undergone trial in the forum of his own conscience. He probably would not succeed well in a case of whose honest merits he should himself have misgivings, though I doubt whether Mr. Waterbury could ever be found the advocate of any such cause.

Thoroughly satisfied of its justice, of its rightfulness, he becomes then filled with a devoted zeal for its success. His special faculty and power of organization enable him to coördinate all the elements and means of success in the most logical sequence and method. In such preparation he spares no labor. He has an intense *love* of justice. As a public prosecutor, recognizing its enforcement to be indispensable to the peace and order of such a community as that of New York, he was inflexible and indefatigable in the discharge of what he felt to be a high moral duty, from which not all his real tenderness of heart would make him swerve, while at the same time he never strained justice into cruelty; nor the

power of the law into oppression. Every syllable was true in the following solemn passage from a speech of his on a trial in which he had to prosecute the author of two atrocious murders mentioned further on, which, if they had passed unpunished, would have placed in constant jeopardy the life of every peaceful citizen walking the brown-stone-fronted avenues of New York :

“ If I know my own self, I would do no wrong to any man. I never knew any motive of benefit, nor any impulse of feeling, which could induce me deliberately to injure a single being in all the world ; and I certainly could not willfully oppress a person accused of crime, in regard to whom I am bound by a solemn oath, the obligations of which require me, not only to conduct the prosecutions of the State, but also to make sure that, by my action, no injustice is done to any man. Standing in the position in which I do, if by any act of mine, any intentional act of mine, a man were convicted who was really innocent of an offense which involved his life, I would be, gentlemen, in the sight of God and man as black and as depraved in heart as he who took the lives of those two men in reference to whose death we are now examining. I trust that I have not, in all this prosecution, exceeded what justice would permit, and I believe I have done nothing more than duty absolutely required.”

On one occasion, after James T. Brady, the greatest advocate in criminal cases of the New York Bar, had made an address which seemed to carry away all the feelings of the jury on a wave of sympathy for the family of his client, the accused defendant, and after the District Attorney had followed in reply, Brady said that Mr. Waterbury's speech was the best he had ever heard in court, and that though he had at first thought *he* had captured the hearts of the jury, Waterbury had taken them all away from him by his counter presentation of the wrongs and sufferings of other innocent families, caused by such acts as his client was being tried for. I mention this circumstance to illustrate what was the truth, that the zeal for *justice*, which was the mainspring of Mr. Waterbury's action, was not a mere stern and cold logical appreciation of an abstraction, but had its source in a deep and genuine feeling of sympathy for the human sufferings of those who are the innocent victims of crime and wrong-doing.

While a very modest, not to say diffident man, Mr. Waterbury had a properly high sense of the dignity, as well as of moral duties of the office of District Attorney, to which he had been elected by the confidence of the people, ratifying the judgment of the more intimate friends who had proposed him for it. On one occasion he had sent a *subpoena* to Commodore Vanderbilt, that great power in the State, who recently died, leaving an estate of over a hundred millions of dollars, who was then the owner of the Pacific Mail Steamship line, requiring the attendance of a witness to prove an indispensable point in a case he was prosecuting, with a memorandum of the point to be proved, for which the testimony of one of his employees would suffice. The great money potentate took no notice of it, nor sent any witness. When the case was called Mr. Waterbury quietly proceeded with the trial, but he took out an attachment, and sent down an officer to arrest the person who had dared to disobey a *subpoena*. In half an hour the tall Commodore sailed majestically into the court-room, attended by a retinue of about a dozen lawyers and friends. The effect was highly sensational. The required testimony was furnished, and the accused person was convicted. The Commodore was not a little astonished to find himself arrested for the first and only time in his life. But he cherished afterward no ill-will for it, while he understood better than before the duty of every citizen to obey the lawful process of the courts.

On another occasion, a bank functionary had to be prosecuted in a case deemed very important, and a committee of bank presidents had, by way of securing the very highest legal talent for the prosecution, requested Mr. Waterbury, who was a young man, to allow the prosecution to be conducted by Charles O'Connor, and other counsel employed by the bank. Mr. Waterbury said that he made no pretensions to rank professionally with Mr. O'Connor, and should be glad and grateful for his powerful aid in the management of the case, the argumentation on the admission of evidence, etc., but that he could not abdicate his duties and responsibilities; while he thought also that the public officer, acting and speaking from the point of view of the public interests, might have a certain weight with the jury different from that of any private counsel, even though so able and eminent as

Mr. O'Connor. He willingly accepted the coöperation proposed, but said the final submission to the jury by the people would be by himself. It happened that at the time of the trial Mr. Waterbury was quite ill, and did not attend any day until an hour or two after the opening of the court. He sat leaning against the wood-work of the raised platform where presided the court, a mere listener to the evidence until the testimony was closed on both sides. The court-room was crowded to its utmost capacity, with spectators attracted by the forensic duel between two such advocates as Charles O'Connor and James T. Brady. When the latter had finished his address for the prisoner, Mr. Waterbury, feeling strongly the pressure of duty, notwithstanding his feeble physical condition at such a trying moment, but having his own clear views of the aspects in which the case should be presented on behalf of the people, walked round to his accustomed seat, took off the wrappings which his illness had caused him to wear, and, without a note of any kind to refresh his memory, commenced his address to the jury, which lasted a couple of hours. He then, with graceful recognition of his great eminence, offered to yield to Mr. O'Connor, if he had omitted or inadequately presented any points which ought to be further argued. Mr. O'Connor replied that there was nothing more to be said, nor could the argument have been better presented. He suggested only a single minor point which had been omitted, and which he begged Mr. Waterbury to state, as he had set forth all the rest. This was done, and the case was won, and with it Mr. Waterbury won also the highest respect and esteem of the whole crowded court-room, bench, bar, and spectators.

In thus speaking of the legal ability and high moral elevation of character exhibited by Mr. Waterbury in his discharge of the important office of the public prosecutor of the City of New York, I have been led to anticipate dates, since it was not until 1858 that he was elected to that position, as will appear below in the proper chronological order.

Mr. Waterbury's capacity and character were early appreciated by observant men. His law studies had been pursued in the office of Messrs. Wells & Van Wagenen, a firm now passed away without succession, but then held in high esteem by the substantial men of the city. He was admitted to the

Bar as attorney, by the Supreme Court, then consisting of three judges, Samuel Nelson being Chief Justice. While in Albany, where the court sat in 1845, to obtain his license as counsellor, his name was erroneously, and without his knowledge, included for Justice of the Marine Court, in a published list of candidates for the various offices, a large number, then to be filled by the Governor, Silas Wright. On his return home, just admitted as counsellor, he was constantly asked if he was going to be appointed. His reply that he was not a candidate did not stop the course of events, for several gentlemen voluntarily wrote to the Governor, recommending the appointment, and Governor Wright, having had personal opportunity of observing the capacity and usefulness of this young lawyer, gave to the suggestion his cordial approval.

Mr. Waterbury was thus suddenly elevated, immediately after his admission as counsellor, to the Bench of a court which had been graced by many distinguished lawyers (among the number, John Wells and Samuel Jones), while still so youthful as to appear a mere boy. The title of Judge seemed oddly fitted to that long and slender youth, with small, beardless, and colorless face, blue eyes, very light hair, and no breadth of chest and shoulders to speak of, always suggestive of the idea of feeble health; yet he made one of the best, most respected, and useful judges that had ever presided in that popular court, which was one of real importance, though of minor jurisdiction.

The truth is, that the judicial character of his mind, his analytical logical power, his quickness of apprehension, and conscientious good judgment, singularly qualified him for the position. But he did not hold it more than four years.

In 1848, one of the most remarkable political contests ever known in the State of New York was fought to the bitter end. Silas Wright (who had refused to accept the Presidential nomination tendered to him at Baltimore in 1844, but who had consented to accept that of Governor in order to strengthen the Democratic party in the Polk and Clay campaign of that year) had been defeated for re-election in 1846, through the hostility of the wing of the party called the "Hunkers," by a small majority, though the Democratic candidate for Lieutenant-Governor was elected. The sudden

death of Silas Wright a few months afterward aroused the most intense hostility on the part of his friends against those whom they regarded as "the murderers of Silas Wright." At the Baltimore Convention of 1844, Mr. Van Buren's re-nomination had been defeated by the opposition of the same faction, who aimed at the nomination of General Cass, though after they saw the vehemence of resentment they had awakened, fearing the loss of the Presidential election, they offered the nomination to Mr. Wright, which he refused, and the compromise result was the nomination of the comparatively second-rate man, Polk of Tennessee.

Nevertheless, Mr. Wright consented to accept the Governorship of New York, as the means of saving the State and the election to the Democratic party, with Polk for its Presidential candidate. The old enemies of Van Buren still strove for the nomination of Cass in 1848, and it was for the purpose of killing off Gov. Wright for 1848, that they defeated his re-election for Governor in 1846, which was soon followed by his death, as above mentioned. Silas Wright was regarded by the young men as the Cato of the Democracy, or, like Brutus, as "the noblest Roman of them all." They would tolerate no association with those at whose door they laid "the deep damnation of his taking off." Cass was again and still the candidate of these latter, and the unforgiving friends of Silas Wright, in his grave, preferred any and all consequences rather than the triumph of Cass and the Hunkers. The fascinating influence and brilliant eloquence of John Van Buren fed the flame of this superheated party feeling. To defeat at all hazards them and Cass, for whom personally they entertained a profound contempt, was their aim and passionate resolve. The result was that strange and unnatural coalition which was represented by the nomination of Van Buren and Adams on the "Buffalo platform." Subsequent history has proven (in my opinion) that this was a grievous mistake, though it had its origin in natural and generous emotions. The result was that Cass was utterly defeated, Taylor being, in the State of New York, first, Van Buren second, and Cass third. The Whigs swept the State and the country. Mr. Waterbury was second to none in his participation in the general feeling and action of the young Democrats of New York, nicknamed the "Barnburners."

The election of Taylor for a single term was, to them, a minor evil in comparison with what they would have regarded as the abomination of Cass under those circumstances. Silas Wright was at least avenged.

To Mr. Waterbury, one immediate consequence was the loss of his position on the bench. The Whigs, in full possession of the State, and eager to possess all the offices, vacated his seat by reducing the term of the incumbent judges, and Mr. Waterbury contentedly returned to the private practice of his profession.

The New York "Barnburner" revolt in the Democratic party, in 1848, was a purely local and temporary episode. The two divisions of the party in New York soon came together again by natural gravitation, and the result was seen in 1852, in the overwhelming majority by which Pierce, a mere brigadier-general in the Mexican war, was elected over General Scott, its brilliant and popular commander-in-chief. Mr. Waterbury approved the Clay compromise measures of 1850, and has never since separated from the National party.

After his retirement, in 1849, from his four years of service on the bench of the Marine Court, Judge Waterbury pursued the modest career of a young lawyer with a practice yet to make, and with qualifications for success, and the achievement of distinction, more solid than showy. And if he was thus legitimately wedded to Themis, she was far from possessing his whole heart. Another passion divided it and led him often into truancy from his law office—that of politics. A full-blooded American, an earnest patriot, an ingrained Democrat full of sincere faith in the people, thoroughly imbued with the spirit of what may be termed the Jacksonian era, imbibed by him from association with that pure and noble set of men of whom, in New York, Van Buren, Wright, Young, Flagg, Michael Hoffman, and others were the chiefs (his intimate friend, Tilden, being another high pupil of the same splendid school), a born organizer, and of that temper of character which made disinterested zeal and indefatigable work for the promotion of what was to him right and duty a very law of his nature, a necessity of his very conscience, that pale and slender young man who, though nearly six feet, weighed less than 130 pounds (he can

now boast his 180), soon came to occupy quite an unique position among the leading men of his party. His politics were a sort of religion to him, and a religion of work as well as of words. He had the confidence of their inmost circle, and was always fond of excellent counsel. He was of most useful private benefit to the Democratic press. Possessing a remarkable memory, attentive to details as well as to generalities, and fond of statistics, he was familiar with the figures of the past votes, not merely of States and cities, but of counties and wards, and not alone of his own State, but of the principal States of the Union; so that in election times, when returns would come in much more slowly and scatteringly than in these modern days of electricity, he was invaluable in helping to the earliest judgment of the results. The tables of comparative returns which, at such periods, were the most important and interesting reading in the columns of the leading Democratic papers, were always sure to have proceeded from his accurate and indefatigable pencil, to which they were a labor of love. And in the city of his own residence, New York, he always took an active and most serviceable part, organization being at once his *forte* and his delight. At the same time he was seldom one of the speakers at public meetings; not only did he not possess the requisite power of lungs and voice, but his style, though easy and excellent in the prosecution of a logical line of argument to carry conviction to the reason of a judge, and the mingled reason and heart of a jury, was not of the kind most effective with popular assemblages. Moreover, at such times he was always too busy otherwise—and after the victory often too much exhausted—for that kind of political work. But many a time, when the brilliant popular orator would seem to carry off so large a share of the credit for the victory achieved, Mr. Waterbury had really contributed ten times more of effective though silent influence to the result.

A sworn enemy to corruption and every form of dishonesty in politics or in morals, and ever unrelenting to the old enemies of Silas Wright (to this day tears have been seen to come to his eyes at that name), while he possessed the unlimited confidence and esteem of all the leading men of his own wing of the Democratic party, he became, of course, the object of a special animosity and dread to those of the other.

In 1853, the members of the Common Council of the city had already become popularly known as "the forty thieves;" and the Legislature, upon the application of a committee consisting of Peter Cooper, Henry Grinnell, James Boorman, and other leading citizens of that high category, which had been organized for the sole purpose of securing municipal reform, passed a series of amendments to the city charter, to be submitted to a popular vote before taking effect. The election for this object was a special one, and none of the political organizations took any part in it.

The danger was, however, imminent that it would be controlled by the members of the Common Council, the most influential politicians of their respective wards, and all interested in defeating the proposed amendments. Only two weeks remained before the election, and the friends of reform found themselves in danger of defeat. Judge Waterbury's ability as an organizer was well known, but he was not a member of the committee. Duncan C. Pell, afterward Lieutenant-Governor of Rhode Island, and Geo. B. Butler, a confidential business associate of the late A. T. Stewart, were sent to request him to prepare a plan for organizing the brief campaign, and to direct it. He promptly prepared a paper setting forth a perfect plan to arouse the dull and languid public attention, so as to secure success at the election. The committee unanimously and gratefully approved his plan of organization and action, and urged him to assume the task of its execution. He finally consented, on condition that he should have the sole management, and should not have to consult with any committee or other authority whatever; to which the committee had the good sense to agree. When the caucus of the Common Council learned that the campaign was to be conducted by him, they realized that any attempt to defeat the amendments would be useless, and all opposition was abandoned. The reform movement was, however, organized with the most perfect and complete system, every detail being arranged with the greatest care, and with such success that the amendments were adopted by a majority of 30,000 in a vote of about 36,000; quite a full vote for a quarter of a century ago.

About two years before this, in 1851, the part of the city in which Judge Waterbury resided was set off as a new ward,

and the Democrats selected him to represent it in the Board of Education of the city; a position always esteemed one of high honor. He declined the nomination, but was nevertheless elected. He could not be insensible to such an expression of confidence, and such an appeal to his philanthropy; and for nearly eleven consecutive years served as a school officer, taking at once a leading part in educational matters. He brought to these new duties the same spirit of zeal and thoroughgoingness which characterized his action in all matters in which he saw duty to be performed and public good to be accomplished. The service was wholly gratuitous, and involved much labor, sacrifice of time, and even some expense. At that period, and for years before, vehement controversy existed between the Roman Catholics, under the lead of their priesthood, and the powerful Public School Society, over the question of the religious influence exerted upon the minds of the children by the spirit and tone of school education. On the one side a Protestantizing influence was produced, or claimed to be produced, through the reading of the Bible in the schools and the use of books containing or suggesting anti-Catholic ideas. The Catholics (chiefly Irish and Democratic in their party associations) not only made such complaints, but claimed that an affirmative religious influence ought to be exerted in the course of early education; and they wanted the existing public school system broken up, and specially Catholic schools established to work side by side with the Protestant ones, according to the preferences of the parents. There was a great deal to be reasonably urged on both sides of such a controversy. Personally Mr. Waterbury was a Protestant (being Episcopalian, and strong for the "Apostolic succession"), and shared the general unwillingness of the community to seeing a sectarian disruption of the great common school system of New York. But he was at the same time a reasonable, just, and, above all, a practical man. In the first year of his service he was appointed by the President of the Board, the Hon. E. C. Benedict, upon a committee to confer with the Public School Society, for the transfer of its schools (about equal in number with those under the control of the Board of Education) to the control of the latter body; and to his tact and ability the accomplishment of that union was largely due. As

chairman of the finance committee or of the committee on by-laws, and as a member of other important committees, his labors were constant and of great value. The statutes of the State relating to the Board, and the by-laws of the Board, were constantly under amendment by him, until finally nearly the whole of both bore the impress of his revision. One signal triumph may be here specified which marked his service in the Board. Some of the schools, in wards with population almost entirely Roman Catholic, were not opened with the reading of the Bible. When the bitterly anti-Irish and anti-Catholic party, which strangely gloried in the name of "the Know-Nothings," obtained for one year control of the Board, a majority of the committee on by-laws reported a by-law to compel such reading of the Bible; under such penalties that, if the local officers failed to obey, the schools should be closed. The proposed by-law had not been considered at any meeting of the committee, so that no remonstrating minority report could be heard against it, but was embodied in a report signed by a majority of its members. Judge Waterbury, in the Board, asked that its consideration should be postponed to enable him to submit the views of the minority. This fair and rightful request was refused, and the by-law was passed by simple force of numbers. At the next meeting (July, 1859), he submitted a minority report, which also bore the signature of the Hon. William E. Curtis, now chief judge of the Superior Court of the city of New York, but the Board refused to receive or print it. Judge Waterbury had it printed at his own expense as a pamphlet, and distributed to the members, the newspapers, and the public, and the result was that the by-law at once became as dead as though a blank paper. It was utterly disregarded, and no attempt was ever made to enforce it. Indeed, the subject was so completely disposed of that in the twenty years which have elapsed, although the agitation of the same question has disturbed other communities, the city of New York has remained entirely free from it. Some years afterward, at the last meeting of the Board attended by Judge Waterbury, and on his proposition, a motion repealing the dead by-law was unanimously adopted. Space permits me to quote only the following, which was the conclusion of the report referred to :

"The undersigned, while they are thus decided in their opposition to the policy of compulsion, are also earnestly in favor of the daily reading of the Bible in our schools. They realize fully the inestimable value of that sacred book, in its influence upon the formation of character, in its guidance of our daily life and conduct, and in the preparation which it affords to all who accept it for the eternity beyond the grave. In their own Wards, where their advocacy of the policy of the daily reading of the Bible is proper and available, they have uniformly expressed these sentiments, and it is gratifying to them that the Bible is, and has been, read daily in every school in their respective Wards, from the organization of each school to the present time. Yet they do not deem it necessary or proper to seek occasion for the reiteration of these sentiments, much less do they believe that that sacred book should be used as a shibboleth by a political or any other secular interest. When religious matters are degraded from their high and holy sphere to the uses of partisanship of any kind, it is too often found that those who are loudest in their professed advocacy are not always, either in their language or conduct, the most consistent with religious purity or principle. Without imputing any such deficiency to their colleagues in the Board who have supported these by-laws, the undersigned have failed to observe anything in the present agitation denoting a higher purpose than they have above indicated; on the contrary, it seems to them to be clearly imbued with the unworthy spirit of personal and political ends, rather than with the peaceful and benevolent spirit of the Gospel of Christ.

"While the undersigned have argued that the Board possesses no power to adopt the compulsory By-Laws, it is due to themselves to declare that they would be adverse to the policy of compulsion, even if the power to adopt it were undoubted. They are entirely convinced of the wisdom and expediency of the rule which leaves this matter to the action of each locality. There is no subject whatever, notwithstanding the gentleness and moderation of its own precepts, and the brotherly love and charity which it inculcates, upon which mankind feel so keenly, or often manifest so much asperity, as upon that of religion. It works its way onward, not by reason of the occasional intolerance and violence of its advocates, but by its inherent beauty, wisdom, and power. They do not believe that a sincere convert has ever been made to any religious doctrine by outward compulsion, whether ecclesiastical, military, or political. It is not probable that any greater success will attend an attempt to force the daily reading of the Bible upon the people of any locality, whatever may be the motives that prompt their opposition to its use; but, on the contrary, the attempt is likely to arouse a more determined resistance.

"In conclusion, because the Board has no authority whatever to pass these By-Laws; because they uproot the wise and beneficent policy consistently pursued during the whole continuance of the existing school system; because there is no necessity for their adoption; because they are harsh, unjust, and oppressive in their provisions; because they proceed upon a basis of violence and

force, hostile to the very spirit of the Bible itself; and because there is imminent danger that they will substitute for a state of prosperity and peace, the issues of strife and destruction, the undersigned were and are opposed to their adoption, and they believe that such opposition will commend itself, not only to every friend of the principles upon which our civil institutions are based, but also to all who prize and venerate the precious and immutable principles of the Christian faith."

In the summer of 1853, the newly-appointed postmaster of New York earnestly solicited Judge Waterbury to accept the position of assistant postmaster, for the special purpose of securing his recognized ability as an organizer, for the establishment of an improved system for the delivery of letters throughout the city; offering to make to the salary such addition, out of his own, as would make it properly remunerative. With great reluctance Judge Waterbury finally consented. Such diversion of his attention and time from his profession was necessarily damaging to his practice of the latter; for the law is a jealous and exacting mistress. Probably the laborious work to be done, for a good public service, and in the element in which he took a certain intellectual delight, exerted a fascination upon Judge Waterbury, which tempted him into an unwise deviation from his proper line of professional life.

At that time the delivery was made by carriers who collected a fee of two cents on each letter for their compensation. Some routes were worth over \$2,000 a year, others under \$500. Every carrier had to attend at the general post-office to receive his letters, though some routes were nearly five miles distant from it. Some made three or four deliveries a day, to others only one was possible. And there were a number of private establishments scattered throughout the city, styling themselves "post-offices," and making rival deliveries. Instead of such system as ought to work the postal service of a great metropolis, there was chaos, and a chaos equally absurd and injurious to the public accommodation. He first broke up the undue advantages of carriers on the dense business routes by requiring half of the carriers' fees to be paid into a common fund, and distributed on a plan by which the carriers on routes covering large areas received a larger sum per letter than those on routes embraced within a circuit of a few hundred feet. Having thus secured the means of equalizing

the delivery over the whole city, he also established hundreds of locked boxes at suitable places throughout the city, from which letters were taken at stated hours each day, by regular collectors. He next assailed the private post-offices, as they were called, and at last, after a desperate resistance, compelled them to discontinue their illegitimate business. Thus, step by step, he gradually, and with great difficulty—because every movement, strenuously resisted by those whose interests were necessarily damaged by reform, had to receive the approval of the department at Washington—prepared the way for an entirely new system. At the end of about two years he had the satisfaction of being able to make his reform comprehensive and complete. The city was divided into seven districts, in each of which (other than the one containing the general post-office) a station was established, designated as stations A, B, etc., each one of which was practically a post-office for the district; so that, while letters continued to be directed to the New York post-office, they were there distributed and sent in bulk to the proper districts, from which they received their local delivery with the utmost possible promptitude and regularity. Conversely the collectors from the boxes delivered at the stations of their respective districts, from which transmission was made to the general office. The constant and rapid communications between the central office and the stations, to and fro, was effected by circulating wagons, making the circuit of the city at stated intervals each day. Not merely the general system, but every detail, including the mapping out of the districts, the hiring and fitting up the stations, the selecting and drilling of the men, etc., was personally attended to by Judge Waterbury; and so thoroughly, that the new system was a complete success from the very day of its opening; working like clock-work, in the whole and in all of its parts. With the growth of the city, the districts have been increased to nearly twenty, but the system remains unchanged, except only that the delivery of letters is now free from any carrier's charge. Once or twice minor changes have been made, but they did not work well, and Judge Waterbury's system, pure and simple, was soon restored. Thus a very model for city delivery of mailable matter was established in New York, which has led to an improvement of the carriers' delivery

everywhere, and to a very large yearly increase in the revenues of the Post-Office Department. Yet few reflect or remember to whose organizing and creative genius all this is due.

The reaction from his excessive labor brought upon Judge Waterbury a severe sickness, a condition of fevered nervous exhaustion. He had all along felt an undue confidence that his elastic, while delicate, constitution could endure the strain of any amount of work that should not exceed twenty-four hours in the day. With a pulse at 120, and unable to leave the house, he had a clerk from the post-office to attend him every day with the papers requiring his action. The grateful postmaster, learning from his physician that his recovery was hopeless unless he should abstain from work, directed that no more papers should be taken to his house. Without the employment which had sustained while it was killing him, he broke down, as the thorough-bred which can, or at least *will*, go while between the shafts, sinks to the ground the moment they are withdrawn. Judge Waterbury was then prostrated in bed with a fever which continued unbroken for two months. As he began to rally a little in the spring of 1856, he proceeded to Cuba, and thence traveled home through the southern states, reaching New York at the end of May, with health completely reestablished. Such is the history, not before written, of the establishment of the present postal system of the City of New York.

While yet in the post-office, it became necessary in November, 1858, to elect a new District Attorney for the city. That functionary is the public prosecutor, and occupies a relation so close to the administration of the general police system, that, while the two branches are officially distinct, he is in some sense its intellectual head. The leading men in the Democratic party appeared to turn, with almost one mind, to Judge Waterbury. He suggested that as he had been out of the practice of the law for over five years, it was a dangerous experiment to put him in that position; but they had full confidence in his ability to fill any office with credit to himself and those who had selected him for it, and he was nominated with great unanimity, and triumphantly elected. Their sagacity was soon vindicated from all doubts whether of himself or others. He had not been four months in the office before he had won the entire confidence of the

public. The wife of a man named Stephens had died one year previously, and there were such strong grounds of suspicion that she had been poisoned, that Judge Waterbury directed the disinterment of the body, and an examination to be made by Prof. R. Ogden Doremus, the eminent chemist. It was found to be permeated in every part with arsenic, which had preserved it from decay, and Stephens was indicted for murder. He was one of the false professors of an ostentatious piety, and his fellow-worshippers in his church rallied indignantly to his defense, and supplied the means for it to be made with ability and vigor. The trial lasted three weeks, and ended in the conviction of the murderer, who, after the case had been taken to the Court of Appeals, and the conviction affirmed, suffered the penalty of the law. The work so efficiently begun was vigorously followed up. Every case of the willful use of deadly weapons, whether fatal or not in the result, was prosecuted, and the guilty were punished. There was a large, powerful, and dangerous class in New York, against whom this bold and firm course was a personally hazardous, and very hazardous, declaration of war. William Mulligan, a gambler, one of its most noted members (who, when excited with drink, was a reckless ruffian, and who was afterward shot to death by the police of San Francisco), found himself compelled to exchange the fashionable broadcloth and diamond studs with which he promenaded Broadway for the simpler uniform of Sing Sing, for the crime of aiming a loaded pistol at a police officer. And while the assaults endangering the lives of public officers were inflexibly and severely punished, these latter were made to know that they too would be held to strict accountability for any unnecessary degree of severity toward even the criminal class. Judge Waterbury held that there should not be any outcast class in a Christian or civilized community, and that care should be taken to show the offenders that while the law exacted obedience it did not withhold just protection. The result was not long in manifesting itself. Even the more depraved, when they found that justice was not a one-sided word, and that, while one hand held the sword of public duty, the other held the shield for the defence of all entitled to it, felt the good and wise mollifying influence; and New York, reversing its bad

repute, became known for a time as unsurpassed for order and quiet by any city of its size in the world. So in regard to the frauds known as ticket-swindling, which made New York a place of terror to the multitudes attracted by its business facilities, who daily embarked at its wharves: Judge Waterbury took up the task of correction in his characteristic thorough-going way, and made short and sharp work of the principal offenders, and so paralyzed and deterred the rest that the system became, and has remained, a thing of the past.

The great case of Charles Jefferds for the murder of John Walton and John W. Mathews, was the most important one of Mr. Waterbury's term of the District Attorneyship. The prisoner had the powerful aid of James T. Brady as his leading counsel. It was a horrid case; an intricately tangled, and every way a most extraordinary one. Jefferds was a step-son of Mr. Walton, being son of Mrs. Walton, by the first of the several marriages of which that with Mr. Walton had been the last. Walton was shot down at the corner of Third Avenue and 18th Street, at 20 minutes past 11, of a bright moonshiny night, when there was no lack of people in the streets. The assassin, who had been lying in wait for him behind a tree, stepped up close to him, after he had passed, killed him on the spot by a large bullet through his brain; fled, was pursued, turned upon his foremost pursuer, Mathews, and by a shot in the breast, laid him also dead on the spot, himself escaping. The pistol was found the next morning in a neighboring yard, where it had been flung, with two barrels out of the five discharged in their work of two-fold murder. As there were two distinct crimes, separated by an interval of time, and prompted by different motives, though the one grew out of the other, there were two indictments. On the first, that for the deliberate lying-in-wait assassination of his step-father, Walton, the evidence was insufficient for a conviction. His face had been seen too rapidly by moonlight, and at too great a distance, for conclusive identification. After a few minutes of hiding under a stoop, he had got off on a street car, and had crossed the ferry to South Brooklyn, where he reached his lodgings so promptly that, in view of some differences of time, as estimated by the various witnesses who heard the shots, it was

a point strenuously disputed for the defense whether he could have accomplished the distance in his flight. And that which was the real motive to the crime, was at once as difficult to prove as it was horrid and revolting, namely, a prompting by his mother to rid her of her husband; prompting in which hire was combined with hate. She had a strong interest in Mr. Walton's death at that time, so that she could receive her widow's dower in his considerable estate; for he had recently put her away for just cause, and she knew him to be on the track of the evidence which would show her either to be the undivorced wife of a husband still living, or to have at least passed for the wife of that other man without the sanction of marriage. On the indictment for the murder of Mr. Walton, Jefferds had escaped conviction, but the District Attorney remained thoroughly convinced of his guilt, and held the other indictment still over him, for the murder of Mathews, his pursuer in his flight; a conviction held also by the brother of the murdered Walton, now guardian of his orphaned children, and as such resisting the suit of Jefferds' mother for her dower. Judge Waterbury did not, however, choose to proceed at once to the trial of the second indictment, but, on the contrary, surprised the public by releasing Jefferds from prison on his own recognizance. More evidence to bring the crime home was necessary, and he trusted to that providential law which always tends to make the murderer himself betray his ever-torturing secret, and was not unwilling that his apparent triumph over public justice, and consequent sense of security, should, together with his habits of dissipation and intemperance, favor the operation of that law. The able Chief of Police, Mr. John A. Kennedy, who had been surprised to see Jefferds thus released from custody without a second trial for the second crime, proposed to the District Attorney to have him "shadowed" by a skillful detective, who should fall into acquaintance and intimacy with him, and so obtain the needed clues to other circumstances of a character to complete the evidence.

Mr. Waterbury felt the strongest obligations of a civic as well as of official duty which called for a conviction in such a case. If such a crime, perpetrated with an audacity so defiant of the public justice, should be crowned with impunity

and triumph, no peaceful citizen's life would be safe on the best streets of New York against the hand of murder, whether prompted by greed or by revenge. The profligate habits of the criminal thus allowed to go at large rendered the task of the detective no very difficult one, notwithstanding that Jefferds was informed by his mother that she was told that his new associate was a policeman. He let out where he had bought the pistol, and even confessed the first murder, for which he knew that he could not now be tried again; indeed, in his cups, he had rather a tendency to boast of it. He was arrested and tried for the second murder, that of Mathews. The case was still a difficult one, being almost wholly one of circumstantial evidence, since a detective's testimony to confessions was very questionable. It also involved the curious point that the Walton murder, for which the criminal was now safe, had virtually to be tried over again; not to convict him for it, but to fasten it upon him as a vital element in the proof of the other murder which had grown out of it; the two being inseparable, and it being conceded that he could not be convicted of the second murder unless he had committed the first, there being otherwise no proof of motive.

The trial lasted a week. Judge Waterbury's management of the witnesses was very masterly, and his address to the jury was a model of clear exposition, lucid analysis, effective grouping of a large variety of details, all converging to the focal point of demonstration and conviction, and of that calm and dignified strength, conscientiously directed to a righteous object, which became a public prosecutor who felt his high but painful function to be that of a priesthood in the temple of justice. It was in the course of this address that he repelled in the language above quoted an attempt that was made by the defense to prejudice the jury by the imputation of a vindictive excess of zeal in the prosecution, giving it a character of persecution. When he sat down all felt the doom of the criminal to be sealed, and the jury were so completely satisfied that upon retiring they immediately voted by ballot, without discussion, that he was guilty.

This trial won high praise for Judge Waterbury for the forensic power displayed by the District Attorney, and better still, the respect of all who had followed it, for the

man. The wretched murderer eventually, however, escaped the doom of the scaffold. He was killed in prison by a fellow-convict, in an affray provoked by the reckless violence of character which had thus conducted him to its foot. A lawyer present at this trial (since a distinguished judge), referring to Waterbury's success as public prosecutor, said that, "Speaking without notes, he had a habit, when he had finished a point, of letting his eyelids close for a few seconds, while he selected the next that he would present. It thus became an axiom among the frequenters of the court, that when the District Attorney shut his eyes the prisoner's last chance was gone."

The signal success of Judge Waterbury as a prosecuting officer was due to an unusual combination of qualities—those qualities, mental and moral, which have been above indicated. His quickness of perception, remarkable memory of facts and faculty of coördinating them, firmness of purpose, conscientiousness, and intense earnestness, would carry his juries along with him almost unconsciously. His fairness was as manifest as was his fearlessness. If he felt any doubt of a person's guilt, he would frankly say so. He would never press a juror into the box to whom an objection could be made with the smallest show of reason. No testimony offered by a prisoner was excluded unless it was so clearly incompetent as to be a mere waste of time; and no prisoner failed to have a material witness because he could not himself procure him, if the public money could bring him. But while he thus gave every fair and proper chance, even to the most guilty, and no word nor act ever manifested the least spirit of injustice to the prisoner, even in the mind of the District Attorney, this very conduct of the prosecution gave additional force to the case established against him, so that it became almost a settled axiom, that for Waterbury to try was to convict, unless he himself declared to the jury that the case involved some reasonable doubt.

If I have dwelt a little on this feature of Judge Waterbury's professional life, it is not alone because I regard it as signally honorable to him, but with a view to present it as a model, alike in its nobleness of method and in its practical success, to all to whom is assigned the delicate function of the public prosecutor—a function which in France is called

and theoretically regarded as a *magistracy*, though we so rarely see it exercised in the semi-judicial spirit befitting that title. In the present instance, I really think it was performed in a spirit not less sincerely *judicial* than if the District Attorney had been sitting on the bench instead of pleading before it.

It may seem strange that such a model District Attorney was not re-elected on the expiration of his term in 1861, but the reason for that was an additional honor to Judge Waterbury's name. Before the close of his term he had felt it his duty to bring before the Grand Jury and investigate certain acts of the Common Council, for which it was reported that large sums of money had been paid. The members of that body, the influential local politicians of the wards, to whom such a prosecution by such a prosecutor opened up a vista in which, through the stages of exposure and disgorgement, the cells of Sing Sing closed the perspective before them, saw in Judge Waterbury (though himself a zealous and active Democratic politician) at once their foe and their fate. The candidate of the Republicans was endorsed by the Mozart branch of the Democratic party controlled by the then Mayor of the city, and though Judge Waterbury ran 7,000 ahead of his ticket (a signal personal tribute), he was defeated by only about 900. Had he been re-elected to continue the campaign of investigation and prosecution then opened by him, it seems probable that the noxious plant of municipal corruption, already vigorously started in a rank soil, could never have flowered out into the splendid and gorgeous proportions it attained just ten years afterward, when the exposure of its enormous growth alarmed the whole country, and added to the American language a word which, as the name of a man now gone to his last account, has become the name of a thing which unhappily is not yet equally defunct.

The extraordinary vigilance and efficiency of Judge Waterbury's discharge of the duties of this office were curiously brought out to public light soon afterward. The Board of Supervisors had voted to raise the salary of his successor from \$5,000 to \$7,000. The Mayor, Mr. Opdyke, a Republican, vetoed the measure, in a message in which he contrasted the work of Judge Waterbury in the last year of his term (1861), with those of the proposed beneficiary of the

increase of the salary in the only year of his term (1862) which had elapsed. The Mayor's figures were as follows, to which are appended the results of the contrast. Dealing with a question referring to Judge Waterbury, he seemed to have caught a little of his genius for figures tabulated in statistical form to prove important facts.

	1861.	1862.	Decrease.	Percentage of Decrease from 1861.
No. of indictments found by the				
Grand Jury, ...	1,239	949	290	.23
“ of convictions, ...	690	399	291	.42
“ “ acquittals, ...	154	97	57	.37
“ sent to City Prison, . . .	79	59	20	.25
“ “ “ Penitentiary, . . .	245	137	108	.44
“ “ “ State Prison, . . .	379	214	165	.59
Aggregate of sentences to State Prison other than for life, ...	977½y.	338⅔y.	638⅔ years.	65

The smallest decrease was in the number of indictments found by the Grand Jury. In the prosecution of the indictments, the decrease was not as great in the acquittals as in the convictions. In the punishments, the decrease was larger, as they increased in severity, until in the aggregate of sentences to the State Prison, which includes both the number sent and the length of their terms, the decrease was nearly two-thirds of the total for 1861. As the same judges presided each year, the comparison illustrates the influence exerted by an efficient prosecutor over the entire administration of the criminal law. It is no wonder that the Mayor could see no good reason for an increase of pay to remunerate so great a falling off in performance. It would be still higher credit to Judge Waterbury, and praise to his administration, if we should, without any comparative disparagement to that of his successor, accept the supposition that the deterrent influence of the certainty of punishment, which had grown up under the former, combined with those wholesome moral influences of a different character of which mention has been made above, had so acted on the vicious habits of the criminal classes of the city as really to have wrought the effect of producing so great a reduction in the frequency and gravity of their offenses against the law and the public justice.

When the news reached New York of the fire opened on Fort Sumter, in the harbor of Charleston, in April, 1861,

Judge Waterbury was selected by the Democratic General Committee of the City of New York to draft an expression of its sentiments (the duty of drafting important resolutions was one frequently deferred to him), and his clear, strong, and patriotic resolutions were adopted with enthusiasm, and were greatly effective in giving hope and courage to the upholders of the Union everywhere, as an authentic declaration of the opinion of the mass of the Democratic party in their great stronghold. They are appended in a note,* as the

**Whereas*, This General Committee, and those they represent, have, to the present time, been the consistent advocates of the rights of every section of our country, and the firm defenders of the Constitutional rights of the Southern people, to protection from every species of assault upon their peculiar domestic institutions, and have always maintained their right to share, upon equitable terms, in the settlement of the National domain, and have made resolute and strenuous efforts to secure an adjustment of the whole matter in controversy, upon a basis at once just and liberal toward the South, and honorable to our whole country; and

Whereas, Several of the Southern States have assumed the position of violent resistance to National authority, which resistance has been carried to the extent of actual war, manifested by outrages on the flag of the United States; the forcible seizure of their fortifications and property; the preparation of extensive armaments and batteries for assault upon the forces of the nation; the bombardment of Fort Sumter; and, finally, by an invitation to the freebooters of the world to prey upon the commerce of our people; and

Whereas, The rulers of the Seceded States, by the measures aforesaid, have commenced a civil war upon the United States, threatening their existence as a National power; and

Whereas, The members of the Democratic party—a party whose history is the record of an eminent and successful part in the formation of our institutions, the administration of our Government, and the prosperity of our country, are especially called upon by all the memories of the past, and all the hopes of the future, to rally with promptness and vigor to the defense of their country against all foes, whether at home or abroad; therefore,

Resolved, That the Democracy of this city are heartily united, with all of its citizens, as one man, to uphold the Constitution, enforce the laws, maintain the Union, defend the Flag, and protect the Capital of these United States, in the full and firm belief that this preservation of our national unity is the only security for the rights, liberties, and power of our own people, and the greatest hope of oppressed humanity throughout the world.

Resolved, That this rally for the country is nobly and wisely made by our whole people, irrespective of party organizations, and without regard to past differences of opinion or action, for the purpose of sustaining the Government in the exercise of its powers and duties as the constituted authority of the nation; and that in the same spirit, and for the same purpose, all questions as to what has been done or omitted in the way of concession and conciliation, and all questions respecting the course and policy of the Administration, should be

best possible presentation of the ideas of a "War Democrat," even while the writer of these pages feels bound to avow that, not less conscientiously, nor less patriotically, than Judge Waterbury framed them, he would have been compelled to oppose them, and to support rather the policy expressed by General Scott and Mr. Greeley, in the expression, "Erring Sisters, go in peace," in the firm conviction that less than five years would have witnessed a sure return, and a better *Reunion*. But victory crowned the policy of the war, which was not less a conflict of ideas, and principles, and consciences, than of arms. Every man's duty in such times and events, was what was dictated to him by his own soul. If mingled good and evil have been its results, so would they have been of a different issue. Happily, all can now meet fraternally on the ground of mutual respect and

forgotten until the national honor has been vindicated, and the national power firmly established.

Resolved, That the unanimity and spirit with which the people of the North have responded to the call of the President for material aid in the present crisis, should not be taken as an indication of the least desire, or even willingness on their part, to war upon the people of the South; but only as an evidence of their determination to preserve the Union, as a blessing of inestimable value, and to defend the sacred Flag of our country, which commands the homage of all our hearts; and of their inflexible resolve that Bunker Hill and Mount Vernon, New York and New Orleans shall never be dissevered.

Resolved, That we cannot disregard the evidences which have been presented, that in many parts of the South, the resistance to the National power has been accomplished by the terrorism of mob rule, and against the interests and wishes of the conservative classes, embracing a large portion of the extensive owners of slaves; and we yet look to Tennessee and Kentucky, containing the tombs of Andrew Jackson and Henry Clay, and the homes of James Guthrie, John J. Crittenden, and Andrew Johnson, in the hope that their fidelity to the Union and the National Flag will be maintained amid all the difficulties of their position; and we pledge ourselves to those States, and to all the loyal men of the South, to defend the Constitutional rights and interests of every section of the Union, at all times and under all circumstances, with the same zeal and fidelity with which we will uphold the National power, and aid in the prompt and proper punishment of all traitors.

Resolved, That we have witnessed with pride and admiration the calm and forbearing possession and heroic defense of Fort Sumter, by Major Robert Anderson, a gallant and noble son of Kentucky, and for his patriotic efforts for peace, his brilliant defense of his Flag, and his manly refusal to surrender to the enemy, we render to him our heartfelt thanks; and that all who may distinguish themselves in the service of this glorious Union in its present peril, will be honored throughout the country, and enshrined in every patriotic heart throughout all time.

self-respect, oblivion of the old animosities, and all be as one in recognizing that

“ There’s a Divinity that shapes our ends,
Rough-hew them how we will.”

The truth is, that the “ Barnburners ” of 1848, the friends of Van Buren, and the “ avengers of Silas Wright,” did not believe in the reality of the long threatened “ danger to the Union ” from the anti-slavery agitation. History soon taught them better, when the Whig party, after 1852, assuming the new name of the “ Republican ” party, made with the Abolitionists, on the large national scale, that same alliance which the “ Barnburners ” in New York had virtually entered into for a momentary occasion, as they deemed, on the “ Buffalo platform.” The result was, that Fremont was all but elected in 1856, and Lincoln elected in 1860; and the dread history of the four years that succeeded we all know; as also the secondary consequences to the whole country, moral, political, and industrial, which have trailed through our sky, like the tail of some baleful comet, from then even till now. Like Seymour and Tilden, Mr. Waterbury and the bulk of the party known as “ War Democrats ” supported the government with steady firmness and zeal in the sustainment and enforcement of the Union, though neither he nor they ever gave any approval to many arbitrary acts of the party in power, incidental to the prosecution of the war, which were deemed to be not less unnecessary than they were in violation of established principles of law and the constitution.

In the fall of 1862, Judge Waterbury was nominated for Member of Congress by all of the three organizations into which his party was at that time divided. His election was certain, the Democratic majority in the city and in his district being overwhelming. But there was a close contest for the governorship between Horatio Seymour and General Wadsworth, in which the former had to a considerable extent the support of the “ Old Line Whigs,” an influential body of men in all the large counties of the State. One of their number, James Brooks, Editor of the *Express*, desired strongly to go to Congress from Judge Waterbury’s district, which he had formerly represented as a Whig of the Clay and Webster times. It was a subject of complaint on the part of that interest throughout the State that, while they were

zealously supporting the Democratic party, they were not even allowed a single member of Congress. They pressed their claim for a seat from the city, and Mr. Brooks was their most prominent representative. It was deemed important toward securing the election of Gov. Seymour that their new Democratic sympathies should not be chilled by refusing them this satisfaction. Judge Waterbury consented that the question of his withdrawal in favor of Mr. Brooks should be referred to Charles O'Connor, John Kelly, and a third person whom Mr. Brooks should select. The result was that it was deemed judicious that Mr. Brooks and his party should be gratified, and Mr. Waterbury at once withdrew, unwilling that in the event of Governor Seymour's defeat he should appear to have contributed to that result by not having appeased that dissatisfaction on the part of the "Old Line Whigs." The local disappointment was very great. Indeed, the Hon. Elliott C. Cowdin, who was the Republican candidate, stated that he would have withdrawn in Judge Waterbury's favor rather than that the latter should retire. Though Judge Waterbury did not believe that the result in the State would be controlled by his action, he preferred, if the representative men of his party would take the responsibility, to avoid any possibility of the imputations which might attend an adverse result. He has several times since been urged to be a candidate for Congress, with the certainty of election, but he felt constrained to adhere to the practice of his profession. This is to be regretted, for it is certain he would have made one of the most useful and influential members of that body, and have done good service to our country.

Gov. Seymour tendered to Judge Waterbury the position of Judge-Advocate-General of the State, and, fearing that he would not accept it, requested the late William Cassidy, then the Editor of the Albany *Argus*, to visit New York and urge Mr. Waterbury to take the office as a matter both of personal friendship and of public duty. He finally consented, because, though nominally a military position, it was really a law office, and the dark days were come which gave it an importance not attaching to it in the ordinary "piping times of peace." It carried the lawful rank and title of Brigadier-General, but Judge Waterbury had so little taste for military display by mere civilians, that he never wore his

uniform in public but on a single occasion, and habitually refused to answer to the salutation of "General." Indeed, the uniform was not ordered by him, but was sent to him as a congratulation upon his appointment, by the late Daniel Devlin, Chamberlain of the city, a leading man in the clothing trade, as also a prominent citizen. Among the great number of our "Generals," he therefore enjoys the distinction of being perhaps the only man who refused to be styled by that title, so that we have to adhere to the old customary civilian designation of "Judge."

In the first year of his service occurred the terrible New York riots of July, 1863. They began on a Sunday, and Judge Waterbury reached the city on the evening of Monday, and after that was constantly on duty. Gov. Seymour, who arrived in the city on Tuesday morning, had great confidence in his ability and tact, and found in him a most efficient aid. On Wednesday noon he suggested to the Governor that the chief cause of trouble was less a riotous disposition on the part of the people, than their enforced idleness, business having been effectually stopped by the fact that neither omnibuses nor railroad cars were running. The Governor authorized him in his name to take measures to remedy this state of things. Proceeding alone in a carriage to the various depots and stables, he saw before midnight the representatives of over twenty of some twenty-six railroad and stage lines, generally situated in the midst of the riotous district (a service of no small danger and daring); and using words of mingled entreaty and authority according to circumstances, and working with his characteristic earnestness and tact, he induced them all to listen to his proposals and enter into his views. They were very apprehensive of the consequences by reason of the threats which had been made by the leaders of the rioters that their buildings should be burned if they should recommence business, but Judge Waterbury arranged with them that military forces should be stationed at various convenient points for the protection of their property. Reaching the police headquarters at one o'clock in the morning, he wrote an order by the Governor to Major-General Sandford to detail a military force to each of the several places designated, and to have them at their posts by five A. M., and handed it to the clerk of the com-

missioners to be immediately delivered. All was thoroughly combined and executed, and worked like magic, and at an early hour the people were delighted by the customary sight and sound of the public vehicles, not less cheering to them than was the simultaneous sunlight, for it was the best assurance that order was restored. If Judge Waterbury had chosen to accept his lawful title of "General" (by which Gov. Seymour always persists in addressing him), he certainly had on this critical occasion fairly earned it; and by better means, and the display of better qualities of good sense and good feeling combined with courage, than those required for the winning of the crimsoned honors of the battle-field.

The provoking cause of these riots had been the disproportionate and unfair allotment for the draft made against the city; an injustice the more irritating because, in its execution, it was made to bear with a peculiar degree of oppression upon a particular nationality. It looked very much like a political discrimination against a Democratic population; at the same time it admitted perhaps the palliation that those who arranged the allotments may have supposed that our Irish fellow-citizens have such a natural love and genius for *fighting* that they might rather like than otherwise the being conscripted for the war, in however excessive a disproportion. Governor Seymour directed the Judge-Advocate-General to investigate the facts in relation to the enrollment in the metropolitan cities of New York and Brooklyn, as a basis for the draft of soldiers. After an examination made with his usual thoroughness, accuracy, and exhaustiveness, Judge Waterbury made a report which proved to demonstration that the enrollment in the metropolitan districts was twice as large in proportion to population as in the interior counties of the State. He proved the political character of the enrollment by showing that while the total votes in 1860 had been, for the Lincoln and Anti-Lincoln Congressional districts, respectively, 457,257 and 151,253, the conscripts from them were, respectively, 39,626 and 33,729; and that while in 1862 the total votes in the Wadsworth and Seymour Congressional districts had been, respectively, 353,621 and 186,255, the conscripts required from them were, respectively, 33,068 and 40,287. Such figures, viz., 40,000 conscripts required in the Seymour districts

(chiefly New York and Brooklyn) from 186,000 voters, against only 33,000 required from 353,000 voters! The calm and persuasive demonstration of Judge Waterbury's report was irresistible. Nor in the President (Lincoln) did he encounter any other than a fair and honest spirit. There had also been great unfairness in the drawing. "In the drawing in the 9th district, which is in the City of New York," says Judge Waterbury in his masterly report, "so far as the list was published, there was a great disproportion in the names of people of a particular lineage, although only one-fourth of the inhabitants of the district were born in Ireland. I called the attention of the President to this fact, and suggested to him that such a result could not be continued throughout the city without being followed by a belief in the public mind that the draft had been unjustly made. He answered, 'Of course not;' and added with an earnestness I was glad to observe, 'I will not permit either a real or an apparent fraud.'" The effect of Judge Waterbury's report was that a commission was appointed by the Secretary of War to examine the matter, and upon its report the quota required from the city was reduced by 20,000 men.

In May, 1862, Judge Waterbury was elected Grand Sachem (or presiding officer) of the Tammany Society, and served one year. At the close of 1863, he retired from the Tammany General Committee, and has ever since been an unyielding adversary of the virtual domination of "Tammany Hall" over the Democracy of New York. A time-serving politician, one less disinterested in patriotism and democracy, less stern and uncompromising in his passion for political purity inseparable from public economy—in a word, one less thoroughly imbued with the spirit of the idol of his youth, and the exemplar of his manhood, Silas Wright—would rather have inclined to keep on good terms with the leaders controlling the majority of his party in the great city of his residence. But such is not, and never has been the temper of Judge Waterbury. Such a man must necessarily make many formidable political enemies, but they respect as well as dread him, even on the field of irreconcilable conflict between them. Himself fears nothing and nobody, and rather exults in the "stern joy" of the fight, than shrinks from its blows, or takes account of his own interests or his own labors

in its conduct. At the same time, while in local politics for municipal reform, and honestly economical good government, he is thus uncompromising, in national politics he is one of the most thorough, sound, and devoted members of the Democratic party of the Union, and as such is one of the most sagacious, prudent, and practical. He is a truly valuable citizen of the Union, the State, and the City, to all of which he has rendered—and will to the end, continue to render—truly valuable patriotic service. *O si sic omnes !*

Many passages in the life of Judge Waterbury have been necessarily omitted from this honest and sincere, while friendly sketch of him, which does not pretend to the character of a biography. One other only will be mentioned. In 1871, an Act was passed by the Legislature for the appointment of three Commissioners to revise the Statutes of the State. Francis Kernan, the present eminent Senator in Congress, who was appointed as one of them, declined to serve, and Governor Hoffman appointed Judge Waterbury in his place ; one of the highest tributes of compliment that could be paid to a lawyer and public man. Gov. Hoffman made the spontaneous selection (as he has assured me) because convinced that he could not find a better man at the Bar to do justice to the work involved. When the Commissioners proceeded to their work, a radical difference was found to exist in their views. The majority insisted on extensive amendments of the statutes. Judge Waterbury, with his ever practical mind, urged that such a course would inevitably array, against whatever report the Commissioners should make, a combination of interests affected by, or differing in opinion from, the sweeping changes proposed, resulting in the probable eventful defeat of the work. He claimed that only such amendments should be made on the body of the statutes, already not very long before revised, as were clearly necessary, namely, such as were merely verbal. Each side presented a report to the Legislature, setting forth its views, but no action was taken by that body. With wide differences of opinion among the Commissioners, which continued in spite of all attempts to harmonize them, the work proceeded but slowly. Both sides again submitted conflicting reports to the Legislature, and as that body, after the lapse of two months, still took no action, Judge Waterbury,

unwilling to waste his time in what he considered useless work, resigned the office. Time has justified the wisdom of his views. After the lapse of nearly eight years from the creation of the commission, and the cost to the State of a quarter of a million of dollars, the commission has ceased to exist, having only partially accomplished its work, of which only a part has been enacted by the Legislature; the profession is profoundly divided over the subject, and the present question appears to be, not whether any more shall be adopted, but whether what has been enacted shall be allowed to stand.

Judge Waterbury is a son of Col. Jonathan Waterbury, a highly esteemed citizen of New York, who died in 1829, at the early age of thirty-one. His mother was Elizabeth Jarvis, daughter of Elijah Jarvis (nephew of Bishop Jarvis), and of Betsey Chapman, daughter of Dr. Chapman, a distinguished physician of that day, of Norwalk, Connecticut. Both of his mother's parents were carried off by yellow fever, in New York, in her infancy, in the year 1801. It was said, at the great ball given by the city to Lafayette, at Castle Garden, in 1824, that Colonel and Mrs. Waterbury were the handsomest couple in the room. Family tradition relates that on the occasion of that ball, the streets and approaches to Castle Garden were so blocked by the crowds of carriages, and people on foot, that Colonel and Mrs. Waterbury had to take a small boat at the foot of Courtlandt Street, to reach the scene of the festivity.

Judge Waterbury married, early in life, Miss Gibson, a lady whose parents, resident in Boston, Mass., had died in her infancy; her mother was of the Cooledge family. She has been ever the blessing and solace of her husband's life. They have three lovely daughters, and one son, now a student in Columbia College, destined, like his father, to the profession of the law. Judge Waterbury is one of the most amiable and unselfish of men, and a true and constant friend, too often, perhaps, too generous a one. Among the million of its population, New York contains no more affectionate and unostentatiously pious a home, one in which the parents are the friends and companions of the children; nor has its portal ever yet been darkened by the shadow of death. Long may it continue to enjoy that favored exemption.

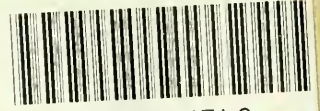
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